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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Toru Mineyama

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EXAMINER

VAN BRAMER, JOHN W

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/973,512	Applicant(s) MINEYAMA ET AL.	
	Examiner JOHN VAN BRAMER	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,9,17,19,20,27 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9,17,19,20,27 and 30-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>042810</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2010 has been entered.

Response to Amendment

2. The amendment filed on March 9, 2010, and the RCE filed on April 28, 2010, cancelled no claims. Claims 1, 9, 17 and 19 were amended and no new claims were added. Thus the currently pending claims addressed below are claims 1, 9, 17, 19, 20, 27, and 30-34.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claim 9, claim elements such as "means for storing", "means for selecting", "means for comparing", "means for generating", "means for reorganizing", "means for generating", "means for providing" and "means for collecting":

Art Unit: 3622

are a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function. There is not explicit recitation in the specification of any physical structures to perform the functions of the means-plus-function limitations in the claims. Therefore, 35 U.S.C. 112, 6th paragraph has not been successfully invoked. The examiner will consider the means to perform the claimed functions as any means, physical or virtual, that can perform the function. Therefore, the claim is indefinite.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9, 17, 19, 20 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ismail et al. (U.S. Patent Number: 6,614,987) in view of Cannon (U.S. Patent Number: 6,029,176)

Claims 1, 9 and 17: Ismail discloses a server operational expenses collecting method, a server, a computer-readable medium comprising:

- a. Storing data in a program viewing log reflecting a first duration of time that a first viewer viewed a first program, the first program corresponding to a first program category from a plurality of program categories. (Col 1, lines 54-67; Col 2, lines 39-51; Col 3, lines 43-48; Col 4, lines 12-27; Col 10, line 63 through Col 11, line 26; and Col 11, lines 36-49)
- b. Selecting one of a plurality of varying threshold durations corresponding to the first program category, the threshold durations corresponding to the plurality of program categories. (Col 10, line 63 through Col 11, line 26; and Col 11, lines 36-49)
- c. Comparing the duration of time the first viewer viewed the first program to the selected threshold duration for the first program category. (Col 10, line 63 through Col 11, line 26; and Col 11, lines 36-49)
- d. Generating first viewer tendency information reflecting whether the duration of time the first viewer viewed the first program exceeds the selected threshold duration. (Col 8, lines 21-46; Col 10, line 63 through Col 11, line 26; and Col 11, lines 36-49)
- e. Reorganizing a first electronic television program guide into a second electronic television programming guide tailored to the first viewer, the reorganizing being done in accordance with the first viewer tendency information. (Col 2, lines 39-51; and Col 131, lines 17-27)

Art Unit: 3622

- f. Generating customer analysis information based on the first viewer tendency information. (Col 8, lines 21-46; Col 10, line 63 through Col 11, line 26; and Col 11, lines 36-49)

While Ismail does not specifically state that it provides the customer analysis information to an advertiser or collects expenses for the provision of customer analysis information from the advertiser, the analogous art of Canon (U.S. Patent Number: 6,029,176) teaches that it is well known to provide television viewing habit information to advertisers and to charge advertisers for providing them with such information (Col 2, lines 1-48). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the customer analysis information to the advertiser for a fee. The rationale for doing so is that common sense dictates that the monitoring and gathering of such information is costly and that one would use commonly known methods for generating a revenue stream to help offset said cost since selling the gathered information to advertisers is one of a limited number of predictable methods for generating a revenue from the gathered information. Additionally, one would be motivated to provide such information to advertisers in order to provide advertisers with effective tools for real-time response to questions about viewing habits and to help them to determine or estimate the probable effectiveness of a given advertising strategy (Canon: Col 2, lines 1-48)

Claim 19: Ismail and Canon disclose the server operational expenses collecting

method according to claim 1, wherein the second electronic programming guide is reorganized based on an absolute viewing program group of programs input by the first viewer. (Ismail: Col 10, lines 1-31)

Claim 20: Ismail and Canon disclose the server operational expenses collecting method according to claim 1 wherein the second electronic programming guide organizes programs into virtual channels, each virtual channel including programs from a plurality of program channel frequency bands. (Ismail: Col 1, lines 54-67; Col 2, lines 39-51; Col 3, lines 43-48; Col 4, lines 12-27; Col 10, line 63 through Col 11, line 26; and Col 11, lines 36-49)

Claim 30: Ismail and Canon disclose the method according to claim 1. While Ismail and Canon do not specifically state the first program category is news, a second one of the program categories is drama, and the drama category has corresponding threshold duration that is longer than the threshold duration for the news category, Ismail does disclose that the duration of time a viewer watches each program and or category is recorded and indicates that the duration for threshold can be set based on the users preferences in Col 4, lines 12-27; Col 6, lines 52-67; and Col 10, line 63 through Col 11, line 49. It would have been obvious to one of ordinary skill in the art at the time the invention was made that programs with shorter duration, such as news program would require a lower threshold than programs such as dramatic movies which have a longer duration. The rational for such a lower threshold is that

common sense dictates that a threshold for a 30 minute program would be less than a threshold for a 2 hour movie in order to ensure that that majority of the program was indeed viewed by the viewer.

Claim 31: Ismail and Cannon disclose the method of claim 1, wherein the first viewer tendency information includes values for titles, categories, and keywords of the programs viewed by the first viewer. (Ismail: Col 5, line 19 through Col 6, line 34)

Claim 32: Ismail and Cannon disclose the method of claim 31, further comprising providing the first viewer with a button for inputting a program rating for the first program. (Ismail: Col 10, lines 15-31)

Claim 33: Ismail and Cannon disclose the method of claim 32, further comprising incrementing the value for the title, category, and the keyword of a program being watched when the viewer presses the button. (Ismail: Col 10, lines 15-31; and Col 12, lines 44-67)

Claim 34: Ismail and Cannon disclose the method of claim 33, further comprising using the value for the title, the category, and the keyword of the first program when the first viewer presses the button to determine other programs to include in virtual channels in the second electronic television programming guide. (Ismail: Col 10,

lines 15-31; Col 10, line 63 through Col 11, line 49; Col 12, lines 44-67; and Col 13, lines 17-27)

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ismail (U.S. Patent Number: 6,614,987) in view of Cannon (U.S. Patent Number: 6,029,176) as applied to claim 1 above, and further in view of Williams et al. (U.S. Patent Number: 5,977,964)

Claim 27: Ismail and Cannon disclose the method according to claim 1, wherein the program viewing log includes program titles, program categories, and program keywords (Ismail: Col 4, line 58 through Col 6, line 34). While Ismail and Cannon do not specifically that the date and day of the week on which programs viewed by the first viewer were broadcast, Ismail discloses that a start time is included in the category data in Col 5, lines 19-25 and that the user can identify program to watch based on a weekly basis or when broadcast basis in Col 3, lines 26-32 or by date, time and channel in Col 10, lines 15-31. Thus such information is available in the invention disclosed by Ismail. The analogous art of Williams discloses gathering viewer habit information including the day and time in which a user views programming (Williams: Col 7, line 31 through Col 8, line 3; Col 12, lines 40-44; and Col 15, line 64 through Col 16, line 18). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the date (which includes the day of the week) on which programs were viewed. The rational for

including the date is that the date and day of the week are one of a limited number of predictable ways in which upcoming shows and television series can be identified for determine a start time for upcoming programs with similar attributes that match a users preferences.

Response to Arguments

7. Applicant's arguments filed March 9, 2010 have been fully considered but they are not persuasive.

a. The applicant argues that Ismail does not teach a "threshold duration particular to a first program category". The examiner disagrees. Ismail specifically discloses in Col 10, line 65 and 66 that Fig 4 as describe in Col 10, line 63 through Col 11, line 26 is describing a "Category Update Routine"; Ismail further discloses in Col 11, lines 18-26 that this "Category Update Routine" has duration thresholds that may be either predetermine and set, or may be variable. The user is even given the ability to enter the duration threshold into the system. Thus, the describe steps are disclosed as being part of a "Category Update Routine" and as such a duration threshold can be set for each category. If the examiner were to interpret the citation as the applicant suggests then it would be impossible for the disclosed threshold to be variable as disclosed by Ismail in Col 11, lines 18-26. Thus, the limitations of the claims as currently written have been met.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Van Bramer/

Application/Control Number: 09/973,512
Art Unit: 3622

Page 11

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Primary Examiner, Art Unit 3622